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In re Application of	:	
Douglas G. LOWENSTEIN et al.	:	
Application No. 09/611,548	:	DECISION ON PETITION
Filed: July 7, 2000	:	TO WITHDRAW
For: FINANCING OF TENANT	:	RESTRICTION REQUIREMENT
IMPROVEMENTS	:	UNDER 37 CFR 1.181

This is in response to applicant's petition under 37 CFR 1.181 filed July 6, 2009 requesting that the restriction requirement made on January 10, 2008 be withdrawn and to vacate the final rejection mailed on October 3, 2008.

The petition is **DISMISSED as moot**.

The record reveals that the examiner issued an Office action on January 10, 2008 requiring a provisional election between Group I of claims 1-27, 31-52, 56-59 and 74-181 drawn to a method of leasing a space to a tenant; Group II of claims 28-30 and 53-55 drawn to a computer program to solicit proposals from tenants for financing tenant improvements to leased spaces; and Group III of claims 60-73 drawn to a method of leasing a longer-lived asset and a shorter-lived asset to a lessee. Applicants elected Group I of claims 1-27, 31-52, 56-59, and 74-141 with traverse in a response filed June 10, 2008. The examiner maintained the restriction requirement in the final Office action mailed on October 3, 2008 and withdrew claims 28-30, 3-55 and 60-73 as being drawn to a non-elected invention. Applicant timely filed a petition on July 6, 2009 to withdraw the restriction requirement and to vacate the final rejection mailed on October 3, 2008.

Applicants' petition alleges that the restriction requirement was improper because claims 1-118 have been examined multiple times and allowed over the art, and that there is no serious burden of search.

A review of the file shows that claims 1-118 had been fully examined in the Office actions mailed on January 29, 2003, January 22, 2004, October 20, 2005, April 20, 2006, and November 1, 2006. Claims 119-125 had been examined in the Office actions dated November 1, 2006. Claims 126-178 were added in the amendment filed on February 26, 2007 responding to the Office action dated November 1, 2006. Claims 179-181 were added in the amendment filed on

October 10, 2007 responding to the Notice of non-compliance amendment mailed on September 10, 2007. MPEP § 803 states that "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." Since the claims 1-125 have been fully examined up to the point the restriction requirement was made on January 10, 2008 and the examiner determined that the newly added claims 126-181 have the same scope as claims 1-27, 31-52 and 56-59, there is no serious burden on the examiner to continue the examination of claims 1-125, and to search as well as examine the new claims 126-181. The restriction requirement dated January 10, 2008 was improper and the finality of the Office action dated October 3, 2008 was also improper.

In the non-final Office action dated February 19, 2010, the examiner opened prosecution, withdrew the restriction requirement and vacate the final rejection dated October 3, 2008. In view of these facts, the issues raised in the petition of July 6, 2009 are considered moot. The petition is hereby dismissed.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Charles Kyle at (571) 272-6746.



Wynn W. Coggins, Director
Patent Technology Center 3600
(571) 272-5350

lm: 3/22/10

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